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JOINT APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

Civil Action No. 4731-'55

LISE HAAS, 2328 Rose Street, Berkeley, California, *Plaintiff*

v.

GEORGE M. HUMPHREY, Secretary of the Treasury, Washington, D. C., and WHITNEY H. GILLILLAND, PEARL CARTER PACE, and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, Washington, D. C., *Defendants*

Complaint for Injunction and for Declaratory Relief

[Filed October 25, 1955]

PARTIES AND JURISDICTION

1. This is an action involving more than $3000 exclusive of interest and costs. This Court has jurisdiction under the provisions of D. C. Code 11-306, 5 U.S.C. 1009, 28 U.S.C. 1331, and 28 U.S.C. 2201.

2. Plaintiff is a citizen of the United States residing in Berkeley, California, and has been a citizen since 1952.

3. Defendant Humphrey is the Secretary of the Treasury of the United States and is sued in that capacity. Defendants Gillilland, Pace and Clay are the members of the Foreign Claims Settlement Commission of the United States, an independent government agency established pursuant to Reorganization Plan Number 1 of 1954 adopted under the Reorganization Act of 1949, as amended (5 U.S.C. 133z et seq.), and are sued in that capacity.

NATURE OF THE ACTION

4. This action involves the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1621 et seq.), and the Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, 62 Stat. 2658, effective July 19, 1948, known as the Yugoslav Claims Agreement of 1948. Under that Agreement, Yugoslavia paid the United States the sum of $17,000,000 in full settlement of certain claims of the United States against Yugoslavia and in full settlement of all claims of United States nationals against Yugoslavia on account of the nationalization and other taking of their property, and rights and interests of property, in Yugoslavia since 1939. Claims not included within the Agreement are, by Article 3 thereof, "subject to compensation by the Government of Yugoslavia". A copy of that Agreement is attached as Exhibit 1. The International Claims Settlement Act of 1949 was enacted to implement that Agreement and to provide for the creation of an agency to adjudicate claims included within that Agreement. Originally the adjudicating agency was the International Claims Commission established within the Department of State, but in 1954 its functions were transferred to the Foreign Claims Settlement Commission involved in this action. Under the procedure prescribed by the Act, awards made by the Commission are certified to the Secretary of the Treasury who then makes payments, pursuant to the awards, solely out of the $17,000,000 paid by Yugoslavia, which was established as a separate claims fund in the Treasury of the United States known as the Yugoslav Claims Fund.

5. Under the Agreement, claims in general are compensable which are based upon property (a) directly or indirectly owned by an individual who at the time of nationalization was a national of the United States, or (b) directly or indirectly owned by a "juridical person organized under

the laws of the United States." Under the Act, provision is made that the Commission shall apply the following criteria: (a) the provisions of the Agreement; (b) the applicable principles of international law, justice, and equity.

BASIS OF THE CLAIM INVOLVED

6. The claim involved in this action arises from the confiscation by the Yugoslav Government, in 1945, of the properties of the National Cotton Spinning and Manufacturing Company, Ltd., a Yugoslav corporation known as "Dugaresa". At the time of that confiscation, one-third of the shares of Dugaresa were owned by a Swiss corporation known as Etexco A. G., the shares of which were held by one Edwin A. Binder on behalf of plaintiff and three other persons. Those shares had been transferred to Binder in 1940 under duress of the Nazi "Aryan" laws believed to be imminently applicable in Yugoslavia. At that time in 1940, the Etexco A. G. shares were owned in equal amounts by plaintiff and the three other persons, all "non-Aryans", through an American corporation named European Textile Corporation. In order to avoid confiscation under the Nazi decrees, which contained a conclusive presumption that any stock held in a chain of more than one corporation was owned by "non-Aryans", European Textile Corporation distributed the stock of Etexco A. G. to plaintiff and her three co-owners, and those four persons caused their shares of Etexco A. G. to be transferred in August of 1940 to Edwin A. Binder, who was an "Aryan" and an American citizen.

7. The shares of Etexco A. G. were transferred to Binder, and were held in his name, pursuant to an agreement that he was to hold the shares and exercise all powers as a shareholder for the equal benefit of the four transferors. That agreement remained in effect from 1940 to 1950, when Etexco A. G. was dissolved.

8. The property of Dugaresa was confiscated by the Yugoslav Government on November 20, 1945. At that time Binder and three of the transferors were all citizens of the United States, but the fourth transferor, plaintiff Haas, was not. An affidavit was duly filed with the United States Department of State on May 31, 1946 setting forth the interest and the citizenship status of Binder, plaintiff Haas, and the other three transferors. A copy of that affidavit is attached as Exhibit 2. A formal claim for compensation was filed with the Department of State on March 24, 1947, and was subsequently supplemented on November 28, 1947 and March 17, 1948. A copy of Supplemental Information No. 2, filed March 17, 1948, which again sets forth in detail the ownership of the various interests and the non-citizenship of plaintiff Haas, is attached as Exhibit 3.

9. At the time of the negotiation of the Yugoslav Claims Agreement of 1948, the facts stated above with regard to Dugaresa, Binder and the four transferors, including the non-citizenship of plaintiff Haas in 1945, were fully known to the Department of State and to the negotiators. The negotiators intended in the Agreement to provide for full settlement of, and full compensation for, the entire Dugaresa claim of Binder and the four transferors, which was to be considered a United States claim in its entirety. The interest of plaintiff was intended, in the Agreement and in separate documents constituting side agreements to the Agreement, to be a compensable claim.

10. Contemporaneously with the signing of the Agreement, the United States gave Yugoslavia a release of claims which were specifically considered by the negotiators and were deemed settled and discharged by the Agreement. Specifically enumerated as one of those claims was the claim of Binder, including in full the interest of plaintiff. A copy of that release is attached as Exhibit 4.

11. At the time of the consideration by the Congress of the bill which became the International Claims Settlement

Act of 1949, the United States Department of State advised the Congress of the facts stated in paragraphs 9 and 10 above. The Department of State advised counsel for plaintiff, who had submitted a proposed amendment to the bill to make clear that the interest of plaintiff in Dugaresa was to be compensable, that the amendment was unnecessary in the light of the history of the negotiation of the Agreement as evidenced by memorandum. Relying upon this representation of the Department of State, plaintiff refrained from pressing her proposed amendment and so informed the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs. Copies of the correspondence and memorandum referred to above are attached as Exhibits 5, 6, 6a, 7 and 8 to this complaint.

DECISION OF THE COMMISSION

12. After passage of the Act, a claim with the appropriate Commission in the amount of $4,012,500 was duly filed by Binder and the four transferors, jointly and severally, for the confiscation of their interests in Dugaresa. A hearing was held by the Foreign Claims Settlement Commission. On December 30, 1954, the Commission issued its decision which held that the confiscation of the property of Dugaresa was compensable under the Yugoslav Claims Agreement in 1948 and that the four transferors were equal owners of the shares of Etexco A. G. and thus of interests in Dugaresa. The Commission made an award to each of the transferors except plaintiff in the amount of $228,396.46 ($196,875 principal amount plus interest of $31,521.46) each, but the Commission made no award to plaintiff and instead denied her claim in its entirety. The Commission made no award to Binder, on the ground that he was not properly a claimant in his own right and had no status other than the underlying status of the four transferors.

13. The Commission denied the claim of plaintiff, and of Binder so far as it related to the interest of plaintiff, solely on the ground that plaintiff was not a national of the United

States at the time of the confiscation of the assets of Dugaresa. In all other respects the claim of plaintiff was identical with the claim of each of the other three transferors, which the Commission held compensable under the Agreement and allowable in the amount of $196,875 plus interest of $36,521.46. A copy of the Proposed Decision of the Commission, which was adopted as part of its Final Decision, is attached as Exhibit 9, and a copy of the Final Decision of the Commission is attached as Exhibit 10.

14. After issuance of the Commission's Proposed Decision, which denied plaintiff's claim solely on the ground of her non-citizenship at the time of confiscation of the assets of Dugaresa, the Department of State sent a letter to the Commission requesting that the Commission give appropriate consideration to statements of three different State Department representatives. A copy of that letter is attached as Exhibit 11. The statements referred to in the letter were interpretations of the Agreement as making the Binder-Haas claim eligible for compensation despite the non-citizenship of Haas at the time of confiscation. The Commission, however, in its Final Decision, adhered to the position taken in its Proposed Decision.

ERRORS COMPLAINED OF

15. The decision of the Commission is erroneous and in conflict with applicable law because:

(a) It is contrary to the Agreement, which was intended to include the claim of plaintiff as a specific exception to the general requirement of citizenship on the date of the taking of property.

(b) It is contrary to side agreements to the Agreement specifically providing for the claim of plaintiff to be eligible for compensation.

(c) It is contrary to the Agreement, because the claim of plaintiff through Binder involved here is eligible for compensation under the general provisions of that Agreement.

(d) It is contrary to side agreements to the Agreement specifically intended to make the claim of plaintiff through Binder eligible for compensation.

(e) It is contrary to the Act, which was intended to recognize the Binder-Haas claim as eligible for compensation.

(f). Because of the actions of the United States set forth set forth in paragraph 11 above, defendants are estopped to deny the eligibility of the Binder-Haas claim for compensation.

IRREPARABLE INJURY

16. The Commission has certified its awards to defendant Humphrey for payment, and unless restrained by this Court he will proceed to pay those awards, which must be paid solely out of the Yugoslav Claims Fund. That fund is limited, consisting originally of only $17,000,000, which was less than the total of all awards made by the Commission, and more than half of which has already been paid out. If defendant Humphrey is permitted to pay the remaining awards, the fund will be completely depleted before this action can be determined.

17. Plaintiff is unable to obtain compensation from Yugoslavia for the claim involved here, because the claim was settled and released by the United States and is therefore barred. If plaintiff cannot recover from the Yugoslav Claims Fund, she cannot recover at all.

18. Plaintiff has no adequate remedy at law.

WHEREFORE plaintiff demands that:

1. The decision of the Commission be declared to be contrary to law and null and void, and that plaintiff's claim be declared to be eligible for compensation from the Yugoslav Claims Fund;